

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SHELLEY C. STEPHENS,	) CIVIL NO. 09-00484 DAE-KSC
	)
Plaintiff,	) ORDER DENYING PLAINTIFF
	) SHELLEY C. STEPHENS' NON-
vs.	) HEARING MOTION TO ALLOW
	) FOR MORE TIME FOR SERVICE
	) AND PROOF OF SERVICE
OFFICERS JENNY LEE, JESSE	) INCLUDING CORRECTIONS TO
KERR AND WILLIAM DERR;	) COMPLAINT; FINDINGS AND
COUNTY OF HAWAII POLICE	) RECOMMENDATION TO DISMISS
DEPARTMENT	) DEFENDANTS JENNY LEE,
	) JESSE KERR, AND WILLIAM
Defendants.	) DERR
_____	)

ORDER DENYING PLAINTIFF SHELLEY C. STEPHENS' NON-  
HEARING MOTION TO ALLOW FOR MORE TIME FOR SERVICE AND  
PROOF OF SERVICE INCLUDING CORRECTIONS TO COMPLAINT;  
FINDINGS AND RECOMMENDATION TO DISMISS DEFENDANTS JENNY  
LEE, JESSE KERR, AND WILLIAM DERR

Before the Court is Plaintiff Shelley  
Stephens' ("Plaintiff") Non-Hearing Motion to Allow for  
More Time for Service and Proof of Service Including  
Corrections to Complaint, filed March 30, 2011.  
Plaintiff moves for an extension of time - until April  
14, 2011 - to serve the Amended Complaint and correct  
unrecorded service. Plaintiff believes that service  
upon Corporation Counsel is sufficient, but seeks

additional time to serve the Defendant Officers. The Motion is DENIED.

As an initial matter, this Motion is untimely. Pursuant to the Rule 16 Scheduling Order, all non-dispositive motions, except for motions in limine and discovery motions, were to be filed by October 13, 2010. Plaintiff has not sought nor obtained relief from this deadline.

Even considering the merits of the Motion, it must be denied. On December 17, 2010, U.S. District Judge David Alan Ezra issued an Order: (1) Granting County's Motion to Dismiss; (2) Denying as Moot County's Motion to Dismiss Unserved Defendants; and (3) Denying as Moot County's Motion for Summary Judgment. Judge Ezra dismissed Plaintiff's First Amended Complaint without prejudice and ordered that Plaintiff file and properly serve an amended complaint within 30 days of the date of the filing of the Order. Order at 22. Judge Ezra cautioned that failure to properly serve any amended complaint in the allotted time would result in a dismissal of the complaint as to the

unserved defendants. Id. Plaintiff concedes that she has not served Defendants Lee, Kerr, and Derr due to her purported inability to locate them. As such, Plaintiff violated Judge Ezra's Order. Judge Ezra expressly warned Plaintiff that her failure to properly serve any amended pleading by January 16, 2011, would result in the dismissal of the amended pleading as to the unserved defendants. In view of this directive, this Court not only denies Plaintiff's request for an extension of time to serve, but also recommends that Defendants Lee, Kerr, and Derr be dismissed for failure to serve.

The Court does take this recommendation lightly. Rather, the Court finds it necessary given Plaintiff's utter lack of effort and diligence to properly serve the individual Defendants since the commencement of this action on July 7, 2008, in state court. On June 29, 2009, the Honorable Greg Nakamura issued an Order Setting Aside Dismissal and for Additional Time to Serve Notice, wherein he granted Plaintiff until September 31[sic], 2009, to serve the

complaint. On September 15, 2009, Plaintiff filed an amended complaint in state court. On October 13, 2009, Defendant County of Hawaii Police Department filed a Notice of Removal. To date, Plaintiff has not served the individual Defendants, despite having named them in her original complaint nearly 3 years ago, and having ample opportunity to do so. Plaintiff has not offered any legitimate argument nor a scintilla of evidence to support her request for an additional 3 months to effect service. At this late stage in the litigation, it would be highly prejudicial to grant any further extensions of time, particularly because Judge Ezra mandated that service be properly effected by January 16, 2011. Accordingly, the Court DENIES the Motion as to the individual Defendants and RECOMMENDS that they be DISMISSED for failure to serve.

The Court also DENIES the Motion as to Defendant County of Hawaii for the reasons stated above. Plaintiff has not provided documentation to support her representation that she served a copy of the amended pleading on Defendant County of Hawaii.

However, because she claims to have delivered a copy to Corporation Counsel, the Court declines to recommend dismissal at this time. Any issues with respect to service upon Defendant County of Hawaii would more appropriately be addressed by Judge Ezra in connection with Defendant County of Hawaii Police Department's Motion to Dismiss for Failure to Properly Serve Defendants for Insufficient Process, filed February 17, 2011.

Finally, Plaintiff seeks to make minor amendments to her Amended Complaint. This request is DENIED. The deadline to amend the pleadings has expired and Plaintiff has not filed a proper motion nor complied with the applicable Local Rules.

#### CONCLUSION

In accordance with the foregoing, the Court HEREBY DENIES the Motion and FINDS AND RECOMMENDS that Defendants Jenny Lee, Jesse Kerr, and William Derr be DISMISSED for failure to serve.

IT IS SO ORDERED AND SO FOUND AND RECOMMENDED.

Dated: Honolulu, Hawaii, March 30, 2011.



  
Kevin S.C. Chang  
United States Magistrate Judge

CV 09-00484 DAE-KSC; Stephens v. Officers Jenny Lee, et al.; ORDER  
DENYING PLAINTIFF SHELLEY C. STEPHENS' NON-HEARING MOTION TO ALLOW FOR  
MORE TIME FOR SERVICE AND PROOF OF SERVICE INCLUDING CORRECTIONS TO  
COMPLAINT; FINDINGS AND RECOMMENDATION TO DISMISS DEFENDANTS JENNY  
LEE, JESSE KERR, AND WILLIAM DERR